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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review --	)	GEN Docket No. 98-68
Amendment of Parts 2, 25 and 68 of the	)	
Commission's Rules to Further Streamline	)	
the Equipment Authorization Process for	)	
Radio Frequency Equipment, Modify the	)	
Equipment Authorization Process for	)	
Telephone Terminal Equipment, Implement	)	
Mutual Recognition Agreements and Begin	)	
Implementation of the Global Mobile Personal	)	
Communications by Satellite (GMPCS)	)	
Arrangements	)	

COMMENTS OF
SEA, INC.

Thomas J. Keller
Lisa M. Higginbotham
VERNER, LIIPFERT, BERNHARD,
McPHERSON & HAND, CHTD.
901-15th Street, N.W.
Suite 700
Washington, DC 20005
(202) 371-6000

Its Attorneys

July 27, 1998

SUMMARY

The Commission's Notice of Proposed Rule Making in this proceeding raises a number of concerns. In essence, the Commission's proposal, if adopted, would increase costs to manufacturers and consumers, and cause delays in the deployment of equipment in the market.

In addition, it is not at all clear that the Mutual Recognition Agreement entered into by the U.S. and the European Community will actually result in easier access to foreign markets by U.S. manufacturers. As explained in these comments, the Commission must take steps to ensure that an agreement that makes it easier for foreign manufacturers to enter the U.S. market must actually provide reciprocal access by U.S. manufacturers to foreign markets.

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COMMENTS OF
SEA, INC.

SEA, Inc. ("SEA"), by its undersigned counsel, hereby files its comments pursuant to Section 1.415 of the Commission's Rules and Regulations,[1/] in response to the Commission's Notice of Proposed Rule Making in the above-listed proceeding.[2/] In the Notice, the Commission proposed to allow private organizations to certify equipment that currently requires approval by the Commission.[3/] In addition, the Commission proposed rules to implement the Mutual Recognition Agreement between the U.S. and the European Community ("MRA") [4/]

1/ 47 C.F.R. § 1.415.

2/ 1998 Biennial Regulatory Review -- Amendment of Parts 2, 25 and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, GEN Docket No. 98-68, Notice of Proposed Rule Making, FCC 98-62 (released: May 18, 1998) ("Notice")

3/ Notice, at ¶ 1.

4/ Id.

I. INTRODUCTION AND STATEMENT OF INTEREST

As a manufacturer of marine and 220 MHz equipment, SEA is required to obtain certification of its equipment from the Commission. In addition, SEA has had varied, including recent, experiences in attempting to obtain product type approval for its U.S. manufactured products from member countries within the European Community. In light of this, SEA is extremely interested in the issues raised in the Notice, and welcomes the opportunity to participate in this proceeding.

As discussed in detail below, the Commission's proposal raises a number of concerns which must be addressed if the proposed use of private sector certification bodies is to work. First, the Commission's proposal as set forth in the Notice would discourage private entities from accepting testing data from manufacturers. As a result, manufacturers and consumers would face the burdens of increased costs and delays in deployment of equipment products in the market. In addition, the Commission's proposal not to restrict the fees to be charged by private entities would also result in increased costs to manufacturers and, ultimately, to consumers.

Further, SEA strongly opposes the Commission's proposal to authorize private entities to conduct periodic audits. Such authorization will undoubtedly encourage some private certification bodies to extract additional fees from manufacturers, while encouraging others to engage in disproportionate auditing. Finally, SEA strongly urges that the Commission continue to be involved in processing equipment certification applications. For the reasons discussed below, the use of private certification bodies

should be viewed only as an alternative, not a substitute, for obtaining equipment authorizations.

With regard to the MRA, the Commission must take steps to ensure that any agreement between the U.S. and another country that is designed to make it easier for that country's manufacturers to enter into the U.S. market must, in practice as well as by its terms, provide reciprocal access by U.S. manufacturers. As discussed below, it is not at all clear that the MRA between the U.S. and the European Community will actually result in easier access by U.S. manufacturers to European markets. SEA strongly urges the Commission to take steps to ensure that this agreement provides in practice this reciprocal relief.

II. USE OF PRIVATE ENTITIES TO CERTIFY EQUIPMENT

A. The Commission's Proposal Would Result in Increased Costs To Manufacturers, Slow Processing of Type Approval Applications, and Delay Deployment of Equipment Products To Consumers.

The present system of equipment certification works better than the one the Commission has proposed. In the Notice, the Commission proposed to allow private entities, referred to as "Telecommunications Certification Bodies" or "TCBs" to certify equipment.[5/] Under this proposal, TCBs would: (1) be subject to numerous qualification criteria;[6/] (2) be held responsible for ensuring that testing complies with the

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[5/] Notice, at ¶ 11.

[6/] Id., at ¶¶ 12-13.

Commission's rules, even where the TCB itself has not conducted the testing;[7] (3) have unrestricted authority to impose fees for certification;[8] and (4) be required to conduct periodic audits on equipment.[9]

All of these elements, individually and taken together, if adopted, spell disaster for the equipment authorization process. This proposed scheme, which is intended to streamline the equipment authorization process, will serve only to increase costs to manufacturers and, ultimately to consumers; delay the processing of equipment authorization applications; and, as a result, delay the deployment of equipment products to consumers. Such an outcome would be inconsistent with the Commission's goal of streamlining its equipment authorization process.

1. The Commission's Proposal Would Discourage Acceptance of Test Data From Manufacturers And, As A Result, Impose Increased Costs and Other Burdens On Manufacturers And Consumers.

Under the current rules, the Commission allows manufacturers to submit self-generated test data for their equipment.[10] Although the Commission itself conducts tests, it does so only on sample units of equipment and only under rare circumstances.[11] This approach has proven beneficial not only to equipment

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[7] Id., at ¶ 17.

[8] Id.

[9] Id.

[10] See e.g., 47 C.F.R. § 2.911. See also, 47 C.F.R. §2.947.

[11] See e.g., 47 C.F.R. § 2.943.

manufacturers who bear less costs, but also to the Commission which benefits from a reduced administrative burden and to consumers who benefit from faster access to new products in the marketplace.

Although the Commission proposed to maintain this option (i.e., TCBs would be allowed to accept testing data from manufacturers),[12] the overall program as proposed in the Notice will discourage TCBs from accepting testing data from manufacturers. Indeed, the proposal to hold TCBs responsible for testing submitted by manufacturers[13] will in and of itself, for reasons of accountability and liability, discourage the acceptance of testing data by TCBs in favor of an approach whereby the TCB will prefer to test the equipment itself.[14]

Other proposals in the Notice will have the same effect. For example, under the Commission's proposal, TCBs would be required to, among other things, maintain impartiality.[15] Although this requirement on its face may not appear to foreclose the acceptance of testing data from manufacturers, some TCBs, in an effort to avoid complaints of noncompliance with this standard, may decide that it will be in their best

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[12] Notice, at ¶ 17.

[13] Id.

[14] It is less likely that the TCB would sub-contract testing out to other entities since, under the Commission's proposed rules, the TCB would still be responsible for tests conducted by the subcontractor. See Notice, at Appendix A, proposed Section 2.962(c)(2).

[15] Notice, at ¶ 17.

interest not to accept any testing data from any manufacturers, thereby, avoiding possible allegations that they may have been influenced by a particular manufacturer.

A decision by a TCB not to accept test data from manufacturers, but instead to test the equipment itself, would result in significant additional costs to manufacturers who would undoubtedly be required by the TCB to pay a substantial fee to cover testing costs. In such a situation, manufacturers would have no choice but to pass these costs on to consumers who purchase their equipment. In addition, such a decision would prolong the time taken by TCBs to process equipment authorization applications and, as a result, would delay the availability of new equipment products to consumers.

These results are inconsistent with the Commission's goal of streamlining the equipment authorization process. In light of this, SEA strongly urges that the Commission not require TCBs to be held responsible for testing that is performed by a manufacturer or a third party laboratory. Rather, the TCB should enjoy the same legal protection as the Commission when it accepts test results from a manufacturer or third party, i.e., just as the Commission is not liable for testing conducted by a manufacturer or third party laboratory, neither should a TCB. Furthermore, to the extent the Commission adopts a rule requiring TCBs to be impartial, the Commission must include language clarifying that compliance with this and other standards is not intended to impede the acceptance of test data submitted by manufacturers.

2. The Commission's Rules Should Not Impose Redundant Requirements On Manufacturers.

In the Notice, the Commission proposed to require that certifications by a TCB be based on the submittal of an application that contains all of the information required under the Commission's rules.[16/] Under the Commission's rules, applicants seeking equipment authorization must include testing data with their applications.[17/] In a situation where testing of equipment is to be performed by the manufacturer (i.e., under the current rules), and such results would be relied upon by the certifying entity, this requirement makes sense. However, as discussed above, under the Commission's proposal as set forth in the Notice, TCBs will have every incentive to test the equipment themselves rather than accept such data from the manufacturer. In light of this, requiring manufacturers to provide "all the information required," including the currently required testing data, would be redundant and would result in additional unnecessary expense to manufacturers. Accordingly, if the Commission insists on requiring TCBs to be responsible for testing conducted by third parties, it should eliminate the requirement that manufacturers submit testing data with their applications.

16/ Notice, at ¶ 17.

17/ See e.g., 47 C.F.R. § 2.911(b).

3. The Commission Should Limit TCBs' Authority To Charge Fees To An Amount Sufficient To Cover The Costs Of Processing A Certification Application Plus A Reasonable Profit.

In the Notice, the Commission proposed not to restrict the fees that TCBs may charge for certification.[18/] SEA strongly opposes this proposal as it would undoubtedly result in increased costs to manufacturers, particularly in cases where a TCB, in an effort to cover its potential liability, decides to conduct its own testing of the equipment.

SEA strongly believes that manufacturers **must not** be subjected to additional regulatory burdens or increased costs beyond those currently imposed on them by the Commission. At the same time, however, SEA recognizes that as private entities, TCBs would legitimately expect to earn a reasonable profit on the services which they offer. Accordingly, SEA urges the Commission to limit the authority of TCBs to charge fees to an amount sufficient to recoup the actual costs of processing certification applications plus a reasonable profit.

B. TCBs Should Not Be Allowed To Conduct Audits.

In the Notice, the Commission proposed to require TCBs to conduct periodic audits of equipment on the market to ensure continued compliance with the Commission's rules.[19/] SEA opposes this proposal. Such a scheme will undoubtedly serve as an incentive for some TCBs to impose additional fees on manufacturers to

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[18/] Notice, at ¶ 17.

[19/] Id., at ¶ 17.

cover the costs of performing such audits. In light of the potential for abuse, SEA strongly urges the Commission not to permit TCBs to conduct post-certification audits. Instead, such audits should be conducted only by the Commission.

To the extent, however, that the Commission adopts this proposal, SEA recommends that the Commission adopt mandatory guidelines by which such audits are conducted in order to avoid the types of abuses described above. Such guidelines must include a rule limiting the TCBs' ability to charge fees beyond the amount that would be recouped by the Commission through its own fee structure (plus a reasonable profit). Such a rule will ensure that manufacturers are not subjected to paying fees greater than what they currently pay to the Commission for the same services.

C. The Commission Should Continue To Process Certification Applications Despite The Designation of TCBs.

In the Notice, the Commission asked whether it should eventually stop issuing approvals, relying instead solely on designated TCBs.[20/] SEA strongly urges the Commission not to stop issuing equipment certification approvals for two reasons. First, given the likelihood that many TCBs will be unwilling to accept test data from manufacturers and the imposition of additional costs that will result, it is imperative that the Commission remain a viable alternative for manufacturers who require type approval of equipment. Second, as the Commission acknowledged in the Notice, an approval issued by the U.S. Government is viewed as more legitimate by potential

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[20/] Id., at ¶ 20.

customers than one issued by another party.[21/] This is also true for several foreign governments who currently accept equipment that has been type approved by the Commission. Many of these governmental entities will be unwilling to accept U.S. equipment that has been approved by a private sector certification body. Accordingly, SEA recommends that the Commission not withdraw from the business of processing equipment certifications once TCBs become operational.

II. THE COMMISSION MUST TAKE STEPS TO ENSURE THAT MUTUAL RECOGNITION AGREEMENTS DO, IN FACT, PROVIDE EASIER ACCESS TO FOREIGN MARKETS BY U.S. MANUFACTURERS.

In the Notice, the Commission proposed rules implementing the MRA between the U.S. and the European Community.[22/] In addition, the Commission expressed anticipation that the U.S. may develop or participate in additional mutual recognition agreements that involve other regions of the world.[23/] These agreements purportedly are designed to allow easier access by manufacturers in one country into the markets of other countries.

While it is clear that the MRA between the U.S. and Europe would allow European manufacturers easier access to the U.S. market, it is not at all clear that U.S. manufacturers would have reciprocal relief abroad. In this regard, SEA notes that in the past, it has experienced serious difficulties in acquiring type approval in foreign

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21/ Id.

22/ Id., at ¶¶ 27-36.

23/ Id., at ¶ 36.

markets. This has occurred because, unlike the U.S. which typically has one regulatory body responsible for type approval of equipment, many European countries have numerous agencies, each having their own set of "type approval" regulations with which U.S. manufacturers must comply prior to selling their equipment in that country.

SEA's experience in seeking type approval in Spain is but one example. In 1997 and early 1998, SEA attempted to acquire type approval for its GMDSS maritime communications equipment. During the process, SEA spent substantial amounts of money and time, and finally succeeded in obtaining type approvals from the Spanish telecommunications authority in accordance with ETSI specifications. Upon receiving those approvals, SEA was then informed that it still could not sell or market its equipment in Spain until its equipment was type approved by a second agency (i.e., the "Marine Authority") with its own set of type approval requirements. This second agency demanded that SEA's products be type approved a second time, this time by a laboratory of the agency's own choosing. These laboratories existed only in Holland and the United Kingdom, and each of these laboratories required a fee of approximately $40,000 to perform the testing. Thus, after devoting substantial revenues to surmount the regulatory hurdles imposed by Spain's telecommunications agency, SEA found itself faced with another set of expensive and burdensome regulatory hurdles imposed by the Spanish marine regulatory agency.

This experience is not atypical for U.S. manufacturers seeking to enter foreign markets. Although foreign manufacturers generally must comply with only one set of standards to enter the U.S. market, U.S manufacturers often are required to comply

with two, three or more sets of standards, each implemented by a different agency within a particular country.

According to the Commission's Notice, under the MRA with the European Community, U.S. manufacturers could have their products tested and certified in the U.S. in conformance with the European technical requirements and then have their products shipped directly to Europe without any need for further testing or certification. In other words, once a TCB certifies a type of equipment under the European standards, that equipment would be allowed to be sold in a particular European country without any requirement to comply with additional type approval standards that might be imposed by that country. In this regard, SEA notes that the agencies responsible for designating certification bodies in European countries all appear to be only the primary agency in each country responsible for implementing that country's telecommunications standards. It is not clear from the MRA or the Notice that other regulatory agencies (e.g., the "Marine Authority" in Spain) will be precluded from requiring U.S. manufacturers to obtain additional approvals. In light of its past experiences in this regard, SEA urges the Commission to take whatever steps are necessary to clarify this issue in the MRA and/or its rules.

Finally, SEA also seriously questions how the proposed TCB scheme proposed by the Commission and set forth in the MRA will work in the context of type approvals for U.S. equipment being exported to European countries. Prior to the MRA, U.S. manufacturers seeking to export equipment to several European countries were required to obtain type approval from each of those countries. Although the Notice and

the MRA are not entirely clear on this point,[24/] it would appear that U.S. manufactured equipment that is to be exported to several European countries, would still need to be certified as being in conformance with the standards of each country. The difference under the MRA is that U.S. manufacturers may obtain from a TCB in the U.S. the type approvals needed for export to Europe.

Under such a scheme, it would appear that a U.S. manufacturer would need either to find a TCB authorized to issue certification for conformance for all of the standards in each of the countries to which the equipment is to be exported, or to have

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[24/] As noted above, the Notice at ¶ 27 states that under the MRA, "products can be tested and certified in the United States in conformance with the European technical requirements." This sentence suggests that certification for conformance with respect to one set of standards is required. Section III of the Sectoral Annex for Telecommunications Equipment appears to support this interpretation in its statement that "each Party recognizes that the conformity assessment bodies of the other Party, . . . are authorized to perform the following procedures with regard to the importing Party's technical requirements for telecommunications terminal equipment, satellite terminate equipment, radio transmitters or other technology equipment . . ." Mutual Recognition Agreement Between the U.S. and the European Community, Sectoral Annex for Telecommunications Equipment, Section III, paragraph 2, p. 20. See also MRA, at p. 2 ("The Government of the United States of America and the European Community, hereinafter referred to as "the Parties."). Paragraph 29 of the Notice however, states that "TCBs . . . will be empowered to certify products for conformity with the technical requirements of countries to which the equipment is exported." Other sections of the MRA also appear to suggest that U.S. manufactured equipment would still need to conform to the regulatory standards of each country to which the equipment is to be exported. See e.g., MRA, Article 3, paragraph 2 ("The European Community and its Member States shall . . . accept or recognize results of specified procedures, used in assessing conformity to specified legislative, regulatory and administrative provisions of the European Community and its Member States . . ." (emphasis added). See also MRA, Sectoral Annex for Telecommunications Equipment, Section I "Legislative, regulatory and Administrative Provisions" at p.17 (reference to "[t]he EC Member States' legislation and regulation in respect of: (a) non-harmonized analogue connection to the public telecommunications network"; (b) non-harmonized radio transmitters-for which there is a civilian equipment authorization requirement . . ."

its equipment type approved by several TCBs, each authorized to grant type approvals for different countries. Both options will result in substantial costs to U.S. manufacturers, particularly small manufacturers such as SEA.

In summary, the arrangement proposed by the Commission is certainly beneficial to foreign manufacturers attempting to enter the U.S. market where there is a single standard. However, it is questionable how beneficial this Agreement will be for small U.S. manufacturers who are seeking to sell their equipment in Europe, where there remains a multiplicity of standards.

III. CONCLUSION

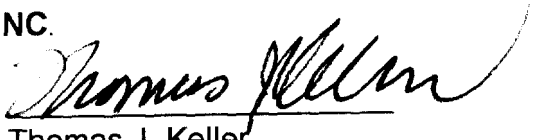
The Commission's proposal to allow private entities to certify equipment would have the opposite result from the one intended by the Commission. In light of the qualification criteria and implementation rules proposed by the Commission, this proposed structure will impose additional regulatory burdens and increased expenses on equipment manufacturers. In addition, the Commission's proposal will result in increased delays in processing certification applications and consequently, delays in deployment of new products to consumers. If the Commission decides to allow private entities to certify equipment, it must make sure that manufacturers and the public are not subjected to additional burdens beyond what those currently imposed under the current process. Moreover, it is imperative that the Commission view the TCB's role as supplemental to, and not a replacement of, the Commission's role in the certification process.

Finally, with regard to the MRA with the European Community, the Commission and other appropriate agencies within the U.S. Government must take steps to ensure

that the agreement enables, in practice, reciprocal access by U.S. manufacturers to the European market.

Respectfully submitted:

SEA, INC.

By: 
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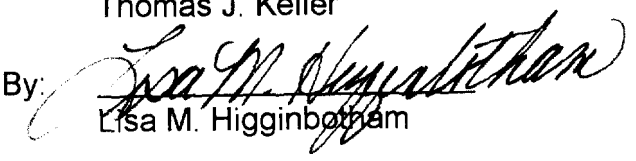
By: 
Lisa M. Higginbotham

VERNER, LIIPFERT, BERNHARD,
McPHERSON & HAND, CHTD.
901-15th Street, NW - Suite 700
Washington, DC 20005
(202) 371-6000

Its Attorneys

July 27, 1998

CERTIFICATE OF SERVICE

I, Deirdre A. Johnson, a secretary for the law firm of Verner,Liipfert, Bernhard, McPherson, and Hand, Chartered, hereby certify that I have this 27th day of June, 1998, caused a copy of the foregoing "Comments" to be sent, via First Class, United States Mail, postage prepaid to each of the following:

Chairman William E. Kennard
Federal Communications Commission
1919 M Street, NW -- Room 814
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
1919 M Street, NW -- Room 802
Washington, D.C. 20554

Commissioner Michael Powell
Federal Communications Commission
1919 M Street, NW -- Room 844
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, NW -- Room 832
Washington, D.C. 20554

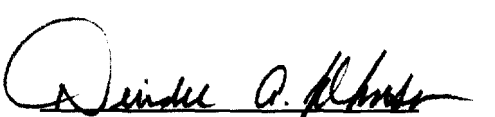
Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, NW -- Room 826
Washington, D.C. 20554

Dale Hatfield
Chief, Office of Engineering & Technology
Federal Communications Commission
2000 M Street, NW
Room 480
Washington, DC 20554

Hugh L. Van Tuyl
Office of Engineering & Technology
Federal Communications Commission
2000 M Street, NW
Room 406
Washington, DC 20554

Julius P. Knapp
Office of Engineering & Technology
Federal Communications Commission
2000 M Street, NW
Room 480
Washington, DC 20554

International Transcription Service
1231 20th Street, N.W.
Washington, D.C. 20037



Deirdre A. Johnson